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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 85-1731 (2)

AUTOMOBILE CLUB OF MICHIGAN, AUTO CLUB INSURANCE ASSOCIATION, AUTO CLUB CASUALTY INSURANCE COMPANY, AUTO CLUB GROUP INSURANCE COMPANY, and AUTO CLUB LIFE INSURANCE COMPANY,

Petitioners,

v.

CLIFFORD ROBERTS, STANLEY SNYDER, FRANCIS DOUGLAS STEVENS, DOUGLAS P. CARLAN, DANIEL PICANO, JOHN ROBBINS, and CARL KOLP, On Behalf Of Themselves And On Behalf Of The Class Of All Sales Representatives Of The Defendants in the Counties of Wayne, Macomb and Oakland,

Respondents.

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rule 22(6) of the Rules of the Court, this supplemental brief is submitted to direct the Court's attention to a significant new labor preemption decision, *National Metalcrafters, Division of Keystone v. McNeil,* 784 F.2d 817 (7th Cir. Feb. 28, 1986) ("*Keystone*"), which was not available at the time the petition was filed.[1]

[1] The petition for writ of certiorari was filed on April 15, 1986. *Keystone* was published on or about April 7, 1986. That publication was not received in the office of petitioners' counsel, or brought to counsel's attention, however, until after the filing of the petition.

This case presents the question of whether a state can, consistent with the National Labor Relations Act ("NLRA"), invoke contractual rights to preclude an employer's use of an economic weapon permitted by federal law. The same issue was in dispute in *Keystone*.[2] Indeed, *Keystone* even involved the same economic weapon: unilateral implementation of the employer's final offer after a bargaining impasse. There, as here, this weapon—conduct which the Court of Appeals deemed "protected" under the NLRA—was challenged because it allegedly deprived employees of contractual "vested rights." 784 F.2d at 827. The employer's response in *Keystone*, as in this case, was that the employee's exclusive remedy was that provided for by the NLRA.

The Seventh Circuit's opinion in *Keystone*, written by Judge Posner, concluded, contrary to the decision below, that "there just is no state remedy." *Id.* at 828. The contractual claim, as a result, was found to be preempted by the NLRA.[3] The basis for this conclusion is the same ground which petitioner has advanced as the principal reason for granting certiorari, that the state remedy "as applied in this case ... in effect authorizes a state official to inject himself into the bargaining process...." The resulting "potential for interference with the system of collective bargaining" was deemed "too great" to sanction a state remedy. *Id.* at 828. That conclusion is similarly warranted in this case.

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[2] The employer in *Keystone* also raised challenges to the state's action predicated on the Employees Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and Section 301 of the Taft-Hartley Act, 29 U.S.C. § 185. The Court of Appeals dealt with each issue separately. It decided it did not have to reach the ERISA question because the application of state law was preempted by both the NLRA and Section 301. 784 F.2d at 823.

[3] Although the Circuit also found preemption under Section 301 of the Taft-Hartley Act, the finding of NLRA preemption was an independent ground; the state action, in other words, was "doubly preempted." 784 F.2d at 828.

Keystone underscores, therefore, the inappropriate accommodation between federal and state law reached by the Michigan courts in the present case. The conflict between the rationale of that decision and the views of the court below is an additional compelling reason to grant the petition for certiorari.

Respectfully submitted,

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